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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SASA MASLIC, individually and on behalf  
of putative class, IVAN DRZAIC, ROBERT  
HERNAUS, LEOPOLD HUBEK, LEON  
HUDOLDETJAK, ELVIS KOSCAK,  
TOMICA PANIC, STJEPAN PAPES,  
ZELJKO PULJKO, DARKO SINCEK,  
DAVID STANTE, NEDELJKO ZIVANIC,  
GOGO REBIC, and MITJA POGOREVC,

Plaintiffs,

v.

ISM VUZEM D.O.O., ISM VUZEM USA,  
INC., VUZEM USA, INC., HRID-MONT  
D.O.O., IVAN VUZEM, ROBERT VUZEM,  
EISENMANN CORPORATION, TESLA,  
INC., and DOES 1 THROUGH 50,

Defendants.

Case No. 5:21-cv-2556-BLF

**NOTICE OF MOTION AND MOTION OF  
COUNSEL FOR EISENMANN  
CORPORATION TO WITHDRAW**

Judge: Hon. Beth L. Freeman  
Hearing Date: April 11, 2024  
Time: 9:00 a.m.  
Courtroom: 3, 5<sup>th</sup> Floor

**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT on April 11, 2024, at 11:00 a.m., or as soon thereafter as the matter may be heard in the United States District Court for the Northern District of California, San Jose Courthouse, located at 280 South 1st Street, San Jose, California, in Courtroom 3 before the Honorable Beth Labson Freeman, counsel for Defendant Eisenmann Corporation (“Eisenmann”) will and hereby do move this Court to withdraw pursuant to Local Rules of the Northern District of California 11-5.

Counsel’s motion is based on this notice of motion and accompanying memorandum of points and authorities, declarations of Aaron M. Bernay, Esq. and Maxwell V. Pritt, Esq., and on such written or oral argument that counsel may present to the Court.

Dated: October 26, 2023

Respectfully Submitted,

By: /s/ Aaron M. Bernay  
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*Attorneys for Defendant  
Eisenmann Corporation*

**MEMORANDUM OF POINTS AND AUTHORITIES**

The undersigned counsel, Frost Brown Todd LLP and Boies Schiller Flexner LLP, have represented Defendant Eisenmann Corporation (“Eisenmann USA”) in three related proceedings before this Court – *Lesnik v. Eisenmann SE, et al.* (5:16-cv-01120-BLF), *Novoselac v. ISM Vuzem d.o.o.* (5:21-cv-08654-BLF), and the instant case – having made initial appearances in *Lesnik* in March 2018. Eisenmann USA has been in liquidation since March 2021, approximately when it received service of the amended complaint in this proceeding. Now in the final stages of liquidation, Eisenmann USA has informed counsel that its litigation reserves are depleted and that it can no longer pay for representation in this matter. Accordingly, counsel move to withdraw pursuant to Civil L.R. 11-5.

**FACTUAL BACKGROUND**

The undersigned counsel are or were counsel of record to Eisenmann USA in three separate proceedings before this Court. Eisenmann USA settled *Lesnik* in March 2020 and this Court granted Eisenmann USA’s motion to dismiss with prejudice in *Novoselac* in July 2022. The only causes of action remaining against Eisenmann USA in this proceeding are the lead plaintiff’s state and federal human trafficking claims.

In July 2019, certain of Eisenmann USA’s corporate affiliates petitioned for insolvency in Germany. As a standalone entity, Eisenmann USA did not file for bankruptcy in the United States and continued to service its North American projects. However, the company eventually found that it was unable to operate as a going concern absent technical assistance and support from its German affiliates. Eisenmann USA sold its environmental technology business in November 2020 and wound down its remaining US operations, including the paint shop division involved in this litigation, on or around March 2021. Eisenmann USA appointed a corporate restructuring officer to preside over the liquidation of its remaining assets to commercial creditors.

Eisenmann USA established a litigation reserve to defend against the claims brought in *Maslic* and *Novoselac*. Given the passage of time, attendant legal expenses, and subsequent distribution of assets to creditors, Eisenmann USA has informed counsel that it no longer has sufficient funds to pay for legal representation in this proceeding. Accordingly, counsel has

1 provided written notice to Eisenmann USA, as well as opposing counsel, of its intention to move  
2 to withdraw from this proceeding per Civil L.R. 11-5.

3 **ARGUMENT**

4 The Civil Local Rules of the United States District Court for the Northern District of  
5 California permit an attorney to withdraw as counsel of record so long as he or she (1) provides  
6 advance written notice to the client and all other parties who have appeared in the case and (2) is  
7 relieved by order of the Court. Civil L.R. 11-5(a). Withdrawal is governed by the California Rules  
8 of Professional Conduct. *Whitaker v. Nowrouzi*, No. 21-CV-03039-HSG, 2022 WL 1288725, at  
9 \*1 (N.D. Cal. Apr. 29, 2022). The Rules allow for permissive withdrawal on various grounds  
10 including when “[t]he client ... breaches an agreement or obligation to the member as to expenses  
11 or fees.” Cal. R. Prof. Con. 3-700(C)(1). An attorney may not withdraw before he or she “has  
12 taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client,  
13 including giving due notice to the client, allowing time for employment of other counsel,  
14 complying with rule 3-700(D), and complying with applicable laws and rules.” *Id.*, Rule 3-  
15 700(A)(2); see also Rule 3-700(D) (regarding the refund of fees and the release of property and  
16 papers).

17 Courts assessing a motion to withdraw engage in a balancing of the equities, considering  
18 such factors as why counsel seeks to withdraw and whether permitting withdrawal may prejudice  
19 other litigants, harm the administration of justice, or delay the case’s resolution. *Robinson v.*  
20 *Delgado*, No. 02-CV-1538-NJV, 2010 WL 3259384, at \*2 (N.D. Cal. Aug. 18, 2010) (citing  
21 cases). The Court routinely permits counsel to withdraw in the face of nonpayment of fees.  
22 *Whitaker*, 2022 WL 1288725, at \*2; *Pension Plan v. Yubacon Inc.*, No. 12-CV-04738-DMR, 2014  
23 WL 1101659, at \*2 (N.D. Cal. Mar. 18, 2014); *Orange Cnty. Elec. Indus. Health & Welfare Tr.*  
24 *Fund v. Moore Elec. Contracting, Inc.*, No. 11-CV-00942-LHK, 2011 WL 2940311, at \*2 (N.D.  
25 Cal. July 20, 2011) (granting withdrawal after client ceased doing business and entered  
26 liquidation).

27 Here, Eisenmann USA has not operated as a going concern since early 2021. Its litigation  
28 reserves have run dry, prompting Eisenmann USA to inform counsel that it can no longer afford

1 to pay for its defense. Allowing counsel to withdraw will not prejudice other litigants, harm the  
 2 administration of justice, or delay the case's resolution. This proceeding is not scheduled for trial  
 3 until nearly a year from now on September 16, 2024, and discovery does not close until May 2024.  
 4 Notably, the majority of named defendants have not appeared in this proceeding, leaving Plaintiffs  
 5 to move for default judgment against them.

6 Under these circumstances, Frost Brown Todd LLP and Boies Schiller Flexner LLP cannot  
 7 continue to represent Eisenmann USA and should be allowed to withdraw as counsel. The  
 8 undersigned have agreed to continue to serve papers on Eisenmann USA until substitute counsel  
 9 appears pursuant to Civil L.R. 11-5(b). Eisenmann USA and Plaintiff Sasa Maslic do not oppose  
 10 this Motion.

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 12  
 13 Dated: October 26, 2023

Respectfully Submitted,

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